Before the Federal Communications Commission
Washington, DC 20554

In the Matter of	**:**	
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Schools and Libraries Universal	**:**	**CC Docket No. 02-6**
Service Support Mechanism	**:**	

REPLY COMMENTS OF THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS

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REPLY COMMENTS SUBMITTED BY THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS IN RESPONSE TO THE RELEASED JANUARY 25, 2002 NOTICE OF PROPOSED RULEMAKING & ORDER

I. Introduction

The Council of Chief State School Officers (CCSSO) respectfully submits its reply comments in the above referenced proceeding. The CCSSO is the organization representing public officials who lead the departments responsible for elementary and secondary education in the states, the United States extra-state jurisdictions, the District of Columbia and the Department of Defense Education activity. It works on behalf of state agencies that serve pre-Kindergarten – 12th grade students throughout the nation to increase student performance.

CCSSO has relied on the important work of state E-rate coordinators, some of whom work directly for state departments of education and some of whom are tasked with other statewide technology efforts. These individuals have offered ongoing support for schools in their states to assist them in navigating the E-rate application process from the beginning, through the acquisition of discounts and/or refunds on their telecommunications and advanced services purchases. These state E-rate coordinators have intimate knowledge about the E-rate program because they help school districts with their E-rate applications, are responsible for state

consortia applications, regularly work with the Universal Service Administrative Company's Schools and Libraries Division ("Administrator"), and have a particularly good grasp of the program's history and intent.

Concerns about the complexity of the E-Rate program were the overriding themes of the comments submitted by applicant and service provider representatives. Such concerns ranged from the complexity of the substantive rules; lack of adequate documentation to explain the substantive rules; the long processing times for various applications and appeals; and, the administrative burdens that applicants and service providers suffer from making legitimate, good faith attempts to comply with E-Rate program rules.

Once again, we applaud the FCC and the SLD in implementing and administering a complicated, heavily scrutinized program that weaves together several laws, rules, and regulations. Yet throughout the process, it is imperative that the FCC and SLD treat E-Rate applicants as customers -- customers who cannot spend precious administrative time and money to comply with the myriad and often confusing program rules and regulations. The FCC needs to know that these rules, regulations and procedures do more to discourage applicants (especially small schools) than to root out fraud, waste and abuse. The Commission should recognize that despite all of our best efforts, many schools do not apply simply because the administrative burdens outweigh the benefits. If we focus here on how many new rules and regulations we can impose -- without eliminating others to better streamline the process -- then we have truly missed an opportunity to better serve the program's intended beneficiaries.

We have no doubt that the level of scrutiny by Congress, the FCC, the General Accounting Office ("GAO") and others is very high. Yet, we believe the answers are not to add rules and regulations, but instead simplify the program and make the accountabilities easier and

stronger. Hence, much of the focus of our comments is to simplify the program without a loss of accountability.

For example, the FCC and SLD need to be able to quickly remedy simple procedural errors, such as a certain box on an E-rate form either checked or not checked, a missing notation in a box, or as in the case of a number of applicants, a process mistake by the Administrator that leads to an incorrect denial. Simple, non-critical errors such as a misplaced date, a printer error on a form, an allegedly non-original signature in the wrong ink color (all errors for which applicants have been denied monies) are issues that should be easily addressed, not subject to appeals processes that can take anywhere from 6-12 months. We submit that the key to any review and subsequent denial needs to be evidence of willful fraud or program abuse, not simple procedural errors - especially when all other evidence points to compliance.

CCSSO, therefore, urges the Commission to adopt only those rule changes that simplify and streamline the E-rate process. The Commission should explicitly determine that any and all modifications to the governing rules are intended to expedite and streamline the program, consistent with the public interest. All of CCSSO's recommendations accomplish this important goal, in a manner that is intended to further the Commission's other important goal of guarding against fraud, waste and abuse.

II. Answers to Requests for Comment

A. Application Issues.

1. Additional, Detailed Information About the Eligibility of Services Must Be Made Available to Applicants and Service Providers.

CCSSO concurs with comments made by Funds for Learning, LLC that most applicants and providers want to follow the rules, but that it is sometimes difficult to discern what those rules are, particularly with regard to eligible services. Funds for Learning, LLC Comments at 3. There is a need to make the decision-making process more transparent so that the Commission, applicants, service providers and the Administrator have the same understanding of the eligibility status of various services and internal connections; the same understanding of the process for making such determinations; the underlying rationale for these determinations, and an appropriate opportunity for all interested stakeholders to provide input before such determinations are made. Clarification of the process for determining which services are eligible for support, and determinations is sorely needed in order to enable applicants and service providers to comply with program rules; to expedite the applications processing by Universal Service Administrative Company ("USAC") as the fund administrator and to mitigate the burdensome (but unfortunately necessary) workload of the post-commitment appeals process.

The Commission apparently recognized that there is always room for improvement, and invited comments on changes in the application process that relate to eligible services and that will serve to improve program operation and our oversight of the program. *NPRM* at ¶13. Specifically, the Commission asked for "proposals for changes that will improve the operation of the eligibility determination process in terms of efficiency, predictability, flexibility, and administrative cost." *Id.*at ¶14. One possible solution, the FCC noted, might be the

establishment of a "computerized list accessible online, whereby applicants could select the specific product or service as part of their FCC Form 471 application." *Id.*

Numerous parties concurred with CCSSO's initial comments, which suggested that as a starting point for developing a computerized online list of services, the existing database that the Schools and Libraries Division ("SLD") of USAC has developed, that identifies and describes the eligibility status of over 750 different services and/or internal connections components, should be publicized so as to minimize the additional cost and time of establishing a separate online computerized list of eligible services. *See* CCSSO Comments at 19-20; Funds for Learning, LLC Comments at 3-4; Coalition for E-Rate Reform Comments at 3-4.

CCSSO and other parties pointed out that while there is no database integrated with the current on-line Form 471application process, there certainly is a stand-alone eligible service database that is available as a resource at the present time. Indeed, during a meeting convened among representatives of the applicant community and members of SLD in the spring of 1999, SLD provided a description of the database and overview of its mechanics. The database includes the following elements:

- Product/Service Name
- Service Category
- Description with potential qualifying information
- Date entered and revised
- Manufacturer's/Vendor's Name
- Model Number
- Approximate Cost
- Status of Eligibility (Yes, No, Pending or Conditional)

It appears to be more searchable than the Administrator's public website as well, since someone can search using a drop-down menu, by key word or by phrase.

Indeed, the CCSSO's understanding of the existing services database is consistent with the explanation provided by the General Accounting Office in a recent E-Rate program audit report. *Schools and Libraries Program: Application and Invoice Review Procedures Need Strengthening*, GAO Report No. 01-105. There, the GAO described the existing eligible services database as follows:

> SLD's primary internal control for ensuring that program funds are not directed to ineligible products and services is the application review process. This process calls for more than one reviewer to examine virtually all applications, identify all ineligible items that an applicant may have included, and exclude these items from the funding commitment made to the applicant. One key aspect of this process calls for reviewers to compare the services described in each application to a database listing more than 750 telecommunications services, Internet access services, and internal connection items, and specifies whether it is eligible, ineligible, or eligible only if certain conditions are met. For each item, the database identifies the type of service, provides a definition and specifies whether it is eligible, ineligible, or eligible only if certain conditions are met.

Id. at 19 (footnote omitted).

The services database undeniably is a cornerstone for SLD's evaluation of eligible services during application processing. By making this resource available to all interested stakeholders, the FCC will empower applicants and service providers to comply more readily with program rules and will expedite the SLD's processing of applications.

Publicizing the existing services database, without any of the identified detriments, would also attain the numerous benefits that USAC cited associated with a computerized online list of eligible services. *See* USAC Comments at 8-11. For example, USAC predicted that the processing of applications may be expedited; customer satisfaction may be improved by not

requiring as many calls to the customer service bureau; and reduce post-commitment appeals. *Id.* These benefits also can be realized by simply making the existing service database available via USAC's web site. The database need not be linked to the Form 471 application. CCSSO's proposal is consistent with USAC's suggestion that the FCC undertake an incremental approach of modifying the procedures for identifying eligible services. *Id.* at 9.

This database is an invaluable tool that simplifies program integrity review. Its importance cannot be underestimated since almost all products and service eligibility hinges on functionality. Because functionality is so important, descriptions provided by service providers do not suffice and the effort the Administrator expends on this list would behoove all participants. Many applicants have reported to state coordinators that they are approached by service providers who describe their particular services in a way that does not necessarily reflect the E-Rate functionality standards. In these situations, some applicants apply for services that may be conditionally eligible according to the public eligible services list, but are not eligible in the particular instance for which the discount is requested. Making the database available to applicants and service providers alike could reduce the confusion that both groups may have experience, regarding the functionality test imposed on eligible services and equipment.

Applicants, and presumably service providers, do not have access to this database and, therefore, when preparing and submitting their various applications, do not have the benefit of the knowledge of the eligibility status of various products and services that is not set forth on the published eligible services list that is on the SLD's web site, but it may be contained within the internal SLD eligible service database. It simply does not make sense to provide limited information to applicants about the eligibility of some services and products, but withhold information about other services and products. It is *impossible* for applicants to comply with the

program rules that mandate that they should apply only for eligible services, unless they know the *full extent to which* services and products are eligible for discounts. The current disconnect—brought about by maintaining the secrecy of the SLD eligible services database, is that unbeknownst to them, applicants prepare and submit Form 471 applications seeking discounts on services that the SLD has determined to be ineligible. If the amount of the ineligible discounts is 30% or greater than the full amount of the applicant's funding request, then the funding request may be denied in its entirety.

There is no good legal or public policy reason why public access to this existing resource should continue to be restricted. This database should serve as the means by which the FCC clarifies and improves upon the eligible services arena. CCSSO is aware that the FCC staff previously denied a request, filed pursuant to the Freedom of Information Act ("FOIA"), to publicly disclose the contents of the SLD eligible services database.[1] Importantly, to the best of CCSSO's knowledge, the FOIA petitioner did not appeal the denial of the FOIA request to the full Commission. Consequently, the Commission has yet to consider whether the existing database may be publicly released, in accordance with FOIA. CCSSO submits that no such exemption is applicable, and that the database should be disclosed.[2]

[1] Freedom of Information Act Request Control No. 21-172 (September 21, 2001), signed by Joseph T. Hall of the then Common Carrier Bureau.

[2] The FOIA denial letter mistakenly claims that Exemption 2 of the Freedom of Information Act, 5 U.S.C. §552(b)(2) precludes the release of the database. Exemption 2 exempts those materials "related solely to the internal personnel rules and practices of an agency." *Id.* The letter claims that a document may be withheld if its purpose is for predominantly internal purposes and if disclosure risks circumvention of agency statutes and regulations, citing *Schiller v. National Labor Relations Board*, 984 F.2d 1205, 1207 (D.C. Cir. 1992). Relying on Exemption 2 of FOIA, the letter rationalizes that the database is an internal resource that the SLD uses to review applications, and release of the database may enable applicants and service providers to circumvent E-Rate program rules, by applying for and receiving discounts on ineligible services. The *Schiller* case, however, is inapposite to the factual situation presented here. In *Schiller,* public access to records relating to the National Labor Relation Board's implementation of a

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Informing applicants and service providers of the full extent of the eligibility of services and products should not be viewed as divulging confidential information. The fact of the matter is, one of the program rules is that applicants may apply for discounts only for eligible services that are provided by eligible service providers. 47 C.F.R. §§54.505(c); 54.502; 54.503; 54.506; 54.517; *see also* FCC Form 471 Instructions-October 2000 at page 17 ("You may not seek support for ineligible services, entities, and uses.") It is *impossible* for applicants to comply with this rule unless they are fully informed about the way in which the Administrator has been directed to implement this rule. If the FCC and/or the SLD are concerned about divulging eligibility information concerning services/products prematurely, before the FCC may have had an adequate opportunity to review and/or approve the database contents, then the problem should be rectified not by withholding this document from public access. Rather, the FCC should take the necessary steps to undertake that review and approval. It is unacceptable to rely on a FOIA exemption that is clearly irrelevant in this context as the basis for continuing to withhold this

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particular law was sought. The records at issue constituted information in which the public had no genuine interest, such as deadlines, instructions as to which agency division to contact for assistance, and record keeping directions. In contrast, the Administrator uses the SLD services database to evaluate the eligibility of services for which discounts are requested in FCC Forms 471 that applicants are required to file pursuant to 47 C.F.R. §54.504(c). The FCC's rules specifically direct the Administrator to make the initial determinations regarding which submitted applications should receive discount funding commitments and the amount of those funding commitments. 47 C.F.R. §54.705(a)(iii). Clearly, the public has a *keen* interest in knowing which services the Administrator considers as eligible for discounts and the conditions governing such eligibility. Given that the SLD services database contains significantly greater quantities of, and more updated, information than the published eligible services list that is posted to the SLD's web site, the public has a keen interest in obtaining access to this information.

It is equally untenable to claim that by describing the manner in which the Administrator intends to administer its review of eligible services on FCC Forms 471, applicants and service providers will be able to circumvent E-Rate program rules. Only by providing this information to the public so that they are fully informed about the implementation of the "eligible services, eligible entities and eligible uses" requirements will the public genuinely be able to comply with E-rate program rules. By continuing to withhold this important resource from public view, the FCC's actions are tantamount to sanctioning the administration of a secret rule.

important information. Knowing what is in the database can save the applicant and the Administrator significant time and effort. First, the applicant may choose not to apply for a product or service if it is known that it will not be allowed. This saves applicants a significant amount of time and effort. Likewise, the Administrator would not have to scrutinize as many products or services since the applicant community would know not to apply for the disallowed ones. As USAC recognized, the additional cost that may be required to pre-review and approve the eligibility of services should be offset by the reduction in costs that it will experience in the processing of applications. *See* USAC Comments at 10.

Finally, it would save the Commission staff time and effort because it could reduce the appeals that are generated from such uninformed choices. This last point is especially important since some of the decisions regarding certain items and services have been revised after appeals. If the process had been transparent to begin with, there could have been fewer appeals and better applications.

Consistent with USAC's suggestions, CCSSO endorses the publication of periodic updates to the database, and the implementation of a mechanism for interested stakeholders to submit eligibility determination requests. The mechanism should incorporate a standard template for submitting eligibility determination requests, a defined response or decision-making timeframe, such as 60 days, and/or the continued ability for SLD to evaluate the eligibility of services/products that are not in the database as part of the application review process. Applicants should be instructed, via the Form 471 instructions, that requests for discounts on services/products that are not expressly identified as eligible or conditionally eligible in the services database should be itemized in separate funding request numbers ("FRNs"). Likewise, applicants that disagree with services that are identified as ineligible may also seek discounts via

a separate FRN and preserve their right to appeal the SLD's anticipated denial of discounts on those services.

In addition, CCSSO recommends, consistent with USAC's Comments, that service providers and applicants may seek to obtain eligibility determinations from USAC outside of the application process. USAC Comments at 11. CCSSO recommends that USAC may benefit from increasing its dialogue with interested stakeholders concerning services and equipment, prior to making eligibility determinations. Such discussions may further enhance USAC's (and the FCC's) understanding of the functionality of different services and products particularly within the education community. The Administrator could utilize its existing regular meeting times and conference call times that it has generously established with the applicant and service provider communities to discuss any such questions or issues on a regular basis.

For all of these reasons, public use of the existing services database is an important first step in the process of creating and incorporating a database for the on-line application and simplifying the Item 21 attachment process. CCSSO respectfully urges the Commission to adopt these recommendations.

2. The Commission Should Modify its Current Policy Governing the Eligibility of Wide Area Networks To Insure that the Policy is Competitively Neutral.

The Commission should maintain its current policy as defined through the *Tennessee* and *Brooklyn* decisions, and modify that policy to implement a competitively neutral approach that enables both wireline and wireless WAN providers to compete on a level playing field. The *Tennessee* and *Brooklyn* limitations, such as the three-part functionality test imposed by *Tennessee* and the required three-year amortization imposed by *Brooklyn* establish important safeguards that should continue.

As several wireless parties explained in their initial Comments, the present WAN rules are biased against wireless providers and strongly favor wireline telecommunications carriers. *See, e.g.,* Dell Computer Corporation's Comments at 4; Integrity Networking Systems, Inc.'s Comments at 1-2; Nextel Communications, Inc. Comment at 1-5; *see also* EdLinc Comments at 14. This bias is ultimately detrimental to educational consumers, who may be unable to obtain the most cost-effective WAN service from a wireline provider, or may be unable to obtain any WAN service at all from a wireline provider. Because of the prohibition against ***purchasing*** WAN facilities and/or service configuration, wireless providers are unable to meaningfully compete in this market. Because of the manner in which wireless technology is used to deliver telecommunications service, wireless providers typically do not lease their facilities and instead offer those facilities for sale. There is no need to network or install conduit facilities either within school buildings or between buildings. Accordingly, the typical demarcation point between internal connections and network facilities (the so-called "network interface device") has no relevance or context in the wireless service industry. Rather, a customer must obtain the equipment necessary to receive the wireless signal and be able to retransmit that signal among its various buildings and classrooms.

Given these considerations regarding wireless WAN services, CCSSO recommends that the Commission establish, consistent with its requirement that applicants must select the most cost-effective bids for services, that the purchase of wireless WAN services may be eligible for discounts as priority one services, if an applicant demonstrates that the wireless WAN constitutes the most cost-effective bid for telecommunications and/or Internet access services.[3] The

[3] The facilities that are used to receive the wireless communications at the point of entry of the school building should be eligible for discounts under priority one. Any facilities that are used to retransmit
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applicant should be prepared to document the cost-effectiveness of the service throughout the anticipated life cycle of the service, which should be, consistent with the approach of the *Tennessee* and *Brooklyn* decisions, a minimum of three years. By prescribing this requirement as part of the proposed rule, applicants will receive adequate advance notice of this program requirement and may include this documentation requirement as part of its competitive bid process.

Likewise, applicants must apply a minimum of a three-year life cycle to the wireless WAN costs in applying for discounts, *i.e.,* a maximum of one-third of the wireless WAN cost should be eligible for discounts in any given funding year. In this case, the same limitations imposed by the *Tennessee* and *Brooklyn* decisions should apply to this scenario as well.

3. The Commission Should Expand the Eligibility of Wireless Services to Facilitate the Protection of Student Safety.

As noted above, CCSSO believes the Commission should reconsider its position regarding WANs and wireless equipment in certain limited circumstances.

In addition, CCSSO concurs with Funds for Learning, LLC Comments that the effort spent on assuring cell phones are not found in the hands of bus drivers and other educational support personnel is extraordinary, particularly related to the effect those expenditures could have on the fund. Funds for Learning, LLC Comments at 6; *see also* USAC Comments at 14. This is not a cost effective way for the Administrator to spend its time. As such, the Educational

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those messages within various school buildings should be eligible for discounts as priority two internal connections.

Use Policy needs to be eliminated or revised to accommodate the needs of schools to provide an environment where children can learn. *See* CCSSO Comments at 15-18.

Further, CCSSO disagrees with the City of Boston's proposition that wireless services that are used within eligible sites should be allowed, but those services that are used in other locations should be ineligible. City of Boston Comments at 4. This position necessarily relies on the existing Educational Use Policy, which for reasons explained in depth in its initial Comments, CCSSO maintains is critically flawed. Further, this position ignores the fundamental importance of assuring student safety from the moment that students enter a bus to the moment that they are returned safety to their departure point from the school bus at the end of each day. Other commenting parties agreed that student safety is a fundamental precept of education that must be recognized in the context of E-Rate's eligible services. *See, e.g.,* Cleveland Municipal School District Comments at 4; Montana Public Service Commission Comments at 3. Students cannot effectively receive the education to which they are entitled if the bus is endangered, which is a real and regular concern during the winter and other months in any location that experiences inclement weather. CCSSO urges the Commission to simplify or eliminate the current policy so that appropriate learning can occur.

4. The List of Eligible Services Should Be Expanded to Include Voice Mail.

CCSSO reiterates its support for including voice mail as an eligible service. CCSSO is also intrigued with the distinction that some commenters, such as the Colorado Department of Education and James D. Gregory, have offered that recommends that voice mail and other voice messaging systems as items that should be eligible. Colorado Department of Education Comments at 4; James Gregory Comments at 1.

CCSSO believes that voice mail service should be treated as Priority 1, particularly since it is offered as part of the telecommunications service package. Administratively and logistically, this is the practical solution and fits with the eligibility framework established. The service is leased; it is offered by a telecommunications provider offering service on a common carriage basis and it is not costly. Moreover, consistent with USAC's Comments, the inclusion of voice mail service (and other ancillary services that appear on telephone bills) as a priority one service will serve to decrease the administrative review process and reduce the Administrator's costs by $150,000 to $200,000 annually. USAC Comments at 12-14.

CCSSO agrees that voice mail systems not associated with the service offered by the telecommunications provider believes that voice mail equipment, such as PBX messaging or other systems should be treated as Priority two internal connections since it is used to transmit information within school buildings, which is consistent with the analytical approach used to define other internal connections components. *See* 47 C.F.R. §54.506.

5. Other Incidental Services That Appear on Telecommunications Bills Should Be Eligible for Discounts.

Consistent with USAC's Comments, CCSSO reiterates its strong support for including the other items on the telephone bill, such as directory listings, unpublished listings, E911 and others to simplify the application review process. USAC Comments at 14.

6. The Commission Should Continue to Permit the Administrator to Utilize the 30% Benchmark When Reviewing Funding Requests that Include Both Eligible and Ineligible Services?

CCSSO notes that many applicants support maintaining the 30% benchmark. We agree with the Elementary School District 101 of Spokane Washington, however, that codifying this practice should not end the Administrator's common practice of conferring with applicants.

Elementary School District 101 Comments at 2. These conversations are invaluable to the applicant and, presumably, the Administrator to assure both groups are using the same terminology and that the reviewer's understanding is accurate. Perhaps, if this is a practice that is to be codified, the practice of conferring with the applicant should be codified as well.

In at least one instance, a commenter suggested that the Commission move to a 20% benchmark. American Association of School Administrators at 4. CCSSO strongly urges the Commission maintain the current policy. This policy is well utilized and understood by applicants. Changes to the policy will cause disruption among the applicant community and may increase the Administrator's processing costs and impose yet further strain on the E-Rate fund.

7. The Standards and Documentation Requirements Governing Consortia Leaders Should Be Developed in Consultation with Interested Stakeholders and Must Not Be Unduly Burdensome So as to Further Discourage Consortia Applications.

CCSSO supports comments from MoreNet, Renaissance, the Illinois State Board of Education and others that the Commission should be very cautious regarding how consortia policies are imposed. The telecommunications and information services marketplace continues to change at a rapid pace. Any modifications to consortia policies do not and should not in any way affect non-tariffed arrangements.

CCSSO also expresses concern regarding the Administrator's suggestions for types of consortium leader requirements, in particular the requirement that the consortium leader assure that any service on its application is not presented on any other submitted application. USAC Comments at 19-21. CCSSO acknowledges that consortium leaders are in a unique and important position that possibly requires certain safeguards for the leaders, the members and the

program. However, the extent to which the proposed certifications resolve problems and provide realistic solutions is debatable.

The kind of certification that USAC proposed presumes that the consortium leader has an intimate understanding of the networking configurations and uses of every consortium member. While some consortium leaders are intimately familiar with the activities of their consortium members, others do not serve this role. Rather, they offer a means of providing a more cost-effective price for services to the consortium members than each member could obtain on an individual basis. As a result, this becomes an unwieldy proposition. CCSSO urges the Commission to consider whether the certifications address a significant problem, a potential problem or merely a suggestion and thoroughly explore other less burdensome options before considering this policy. If any additional consortium leader certification is mandated, the certification should not mandate the consortium leader to make any representations concerning what, if any actions that the underlying consortium members may have taken, with respect to filing E-Rate applications.

B. Post Commitment Program Administration

1. The Commission's Rules Should Specify That Service Providers Must Offer Applicant the Option of Discounts or Direct Payment of Reimbursements Pursuant to the Billed Entity Applicant Reimbursement (BEAR) Form.

As the CCSSO explained in its initial Comments, the E-Rate program rules should be codified to prescribe that service providers must provide discounts to applicants at the applicant's request. Moreover, applicants may choose to receive discounts in the form of reimbursements through the submission of a Billed Entity Reimbursement Form ("BEAR"). When an applicant chooses to file a BEAR form, the applicant—to whom the reimbursement is

owed--should be permitted to directly receive the reimbursement check. This basic precept is not currently allowed under the current E-Rate practices. Rather, pursuant to procedures that are prescribed in the Instructions to the FCC Form 474 and not codified anywhere in the FCC regulations, BEAR reimbursement checks are issued only to service providers, even though the applicant has already paid for the services for which reimbursement has been sought. Service providers in turn are required—again only pursuant to FCC Form 474 instructions—to forward the reimbursement check to the applicant, who was the intended recipient in the first instance. To the CCSSO's knowledge, there is no publicly available rationale for why the FCC has insisted that this circuitous approach must be utilized.

The CCSSO is by no means alone in its advocacy in favor of permitting BEAR checks to be sent directly to applicants. *See, e.g.,* Comments of Tel-Logic Inc. d.b.a. E-Rate Central at 13, WiscNet at 3; Carnegie Library of Pittsburgh at 1, Colorado Department of Education at 7; Kathleen Bond Grainger at 2; Kentucky Department of Education at 2; New York Public Library at 4-5; State Library of North Carolina at 1; Pennsylvania Department of Education at 5; Arkansas E-Rate Working Group at 6.

Applicants currently experience the built-in delay in having to wait for the BEAR check to first be sent to the service provider and for the service provider to forward the reimbursement amount to applicants. In addition, applicants often experience even more significant, extended delays when service providers may refuse altogether to remit the reimbursement, in the case where the service provider has gone out of business, into bankruptcy, or simply refuses to cooperate with the applicant.

This change would significantly improve the post-commitment process and allow applicants, providers and the Administrator to streamline the payment process significantly. This proposal is both legal and in the public interest. It should be adopted.

The CCSSO strongly reiterates that the E-Rate program rules should explicitly codify that applicants may choose whether to use discounts or a BEAR form. Some commenters suggest that the current process where applicants and service providers "work it out" suffices. The current process is not currently required in law or codified by the Commission. Instead, it is a series of instructions to applicants.

The CCSSO also disagrees with commenters who prefer to allow exceptions for small providers. Whether a service provider is large or small should not govern this policy. The policy should be governed by what is in the best interest of the applicant and only the applicant can make that decision.

2. The Commission Should Incorporate Enforcement Measures for BEAR remittals After 20 days.

The CCSSO supports comments submitted by E-Rate Elite Services that there should be a penalty imposed when service providers fail to sign the BEAR forms—as currently required pursuant to the instructions to FCC Form 474--are not remitted to the applicant in the appropriate period of time. E-Rate Elite Services Comments at 7. E-Rate Elite Services also recommends, and we support, that the Administrator receive fines to cover administrative costs associated with addressing this issue and the applicant receive additional funds, such as the interest associated with the delayed remittal. *Id.* CCSSO believes that the fines and interest should be self-enforcing and automatic when an applicant reports BEAR remittal non-compliance with USAC.

CCSSO also agrees with the Pennsylvania Department of Education and other commenting parties that applicants should be given more discretion when they cannot find a contact at the service provider who will respond to the BEAR signature request. Pennsylvania Department of Education Comments at 5. To resolve this ongoing problem, we believe BEAR signature pages should be returned to the applicant within five (5) days. If it is not returned, the applicant should be able to send in the BEAR form with a note specifying the steps it took to get a service provider signature. It would also be useful if there was accurate information on the Administrator's website regarding contacts and faxes that are appropriate for any service provider with a Service Provider Identification Number.

While some commenters believe that small providers should treated differently, again, CCSSO does not believe that a reasonable timeframe, such as 14 days, imposes a significant burden. Separate rules for small providers unnecessarily complicate the program and should not be adopted.

However, CCSSO agrees with the American Association of School Administrators that the Administrator should clearly articulate the governing procedures so that all applicants and service providers understand how the process works. American Association of School Administrators at 4.

If the Commission does not agree that applicants using the BEAR Form should be paid directly, CCSSO offers two few suggestions for improving this process. For example, the Administrator could implement a procedural change that the current BEAR letter to the applicant states when the BEAR check will be sent to the service provider. This way, the applicant will know how long they should wait to receive a BEAR payment. Alternatively, the Administrator

could wait until the check is sent to the service provider before sending a letter to the applicant. This also clarifies when the service provider check should be expected.

Finally, CCSSO wishes to comment on the Philadelphia Schools and Funds for Learning, LLC proposals that applicants must be required to sign the Service Provider Invoice Form (SPIF) to assure the applicant concurs that the service provider has provided the services itemized in the SPIF. It makes sense to provide for this additional control and safeguard where applicants may desire to carefully monitor the service provider's actions concerning the provision of services to the applicant. This may be particularly appropriate or necessary in those situations involving one-time or nonrecurring services or purchases of internal connections equipment. Similarly, applicants that may have recently forged a business relationship with a service provider may want to more carefully monitor that service provider's actions until the parties have acquired experience and established an ongoing business relationship.

On the other hand, the CCSSO is mindful of applicants' concerns that the E-Rate program rules should be streamlined and not made more complex. To balance these various concerns, and to assure that applicants are not burdened where no additional burden is needed, the CCSSO recommends that applicants be given the choice of whether they desire to sign SPIFs before SLD will process the particular SPIF. That choice could be presented on the Form 486 or FCC Form 471 as a check box next to the Funding Request Number. This would reduce the paperwork volume that a blanket policy could impose; make the appropriate safeguards available only to those limited applicants who need this protection; and, assure that applicants and service providers alike clearly understand the payment policies that are applicable to E-Rate program invoices.

3. The FCC Should Establish Rules That Limit the Transfer of Equipment to Other Eligible Entities and Limit the Filing of Applications for Internal Connections Discounts by the Same Billed Entities.

In reviewing the breadth of comments on this particular issue, CCSSO believes the Commission would be well served to determine what outcome is most important for the program. Many commenters suggested that applicants should be limited in their ability to transfer equipment from one site to another. However, equipment transfer does not necessarily provide more funds for other applicants and may limit legitimate transfers. If the Commission feels that it needs to know where the equipment is going, perhaps there should be a notification required. In addition, CCSSO, like many commenters, has strong reservations regarding the ability to trade in equipment. The possibilities for abuse outweigh the benefits to applicants whose funding requests are not limited.

If, on the other hand, the Commission is more concerned about spreading funds equitably among program applicants, limiting funding requests to every other year or changing the discount matrix is more appropriate since it will more regularly affect the fund's disbursement among applicants.

While CCSSO provided detailed comments regarding potential changes to the discount matrix, we did not provide details regarding the limitation on internal connection funding requests every other year except for maintenance. Once an applicant has been fortunate enough to receive funding for internal connections, it is equally important to keep this infrastructure running. To that end, an additional service category of Internal Connections Maintenance should be added to the Form 471 along with Telecommunications Service, Internet Access and Internal

Connections. This will simplify the Administrator's ability to differentiate it from other Internal connections requests. This service category would remain a Priority 2 item for funding purposes.

4. The Commission Should Codify the Proposed Standards As Set Forth in the NPRM to Allow Ineligible Entities to Use Excess Service in Remote Areas, Consistent with the Alaska Waiver Petition.

Consistent with its initial Comments, the CCSSO maintains its support for codifying the standards that the FCC used to decide the *Alaska Waiver Petition*[4] in order to permit otherwise ineligible entities to use excess services in remote areas where there is no toll-free Internet access available.

Contrary to numerous commenting parties' suggestions that Alaska is the only area in the United States where toll-free Internet access is not available, the CCSSO has identified numerous other geographic regions in other states without toll-free Internet access. For example, the Nevada State Department of Education funds an 800 toll-free number to provider schools with Internet access in that state. Obviously such a service would be unnecessary if toll-free service existed throughout the state. Similarly, there are 18 counties in Florida where all or a portion of the schools located in the county must pay a 25 cent toll charge each time that they access the Internet. Likewise, there are at least two areas in Illinois where toll free Internet access is not available: Sorento, Bond County, Area Code 618 and Scottville, Macoupin County, Area Code 217. These areas are by no means exhaustive, but simply illustrative of the fact that there are numerous places throughout the United States where toll free Internet access is still not available to communities at large.

Accordingly, the CCSSO supports the five criteria proposed by the Commission in the *NPRM* at ¶46. These criteria should be codified as an exception to the general rule prohibiting ineligible entities from obtaining discounts on services, and should be implemented by the Administrator in the first instance. The FCC Form 471 should be modified to enable applicants to request authorization to use excess services in remote areas, so as to notify the Administrator of this request. Applicants should be instructed to a file a separate Form 471 application for any funding requests associated with a request to use excess services in remote areas. The FCC should prescribe in its rules the documentation requirements that successful applicants must maintain, to confirm that they are in compliance with the five governing criteria. By proactively prescribing these requirements, applicants will have appropriate advance notice of the applicable requirements and will be able to take the necessary steps to insure compliance.

C. The Commission Should Adopt the Administrator's Recommendation to Implement an Appeals Template and Should Direct the Administrator to Make Up-to-Date Appeals Status Information Available On-Line.

In this section, the Administrator suggested that the Commission consider requiring an appeals template. USAC Comments at 28. CCSSO agrees with this concept. It has been difficult for applicants to determine what information is necessary for an appeal. As a result, appeals can take additional time to resolve as the Administrator and, presumably, the Commission attempt to discern who is appealing, for what application, regarding what issue. A template will simplify those questions and improve the appeals process.

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[4] Federal-State Joint Board on Universal Service, Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling, *Order,* CC Docket No. 96-45, FCC 01-350 (December 3, 2001).

In addition, CCSSO agrees that there should be improved access to an on-line database where applicants and state coordinators can track what has happened to an appeal. American Association of School Administrators' Comments at 5. This database should include activity at the Commission as well.

D. Enforcement Tools

1. Applicants Should Not Be Required to Pay for Independent Audits.

CCSSO supports the Funds for Learning, LLC suggestion that the Commission consider a Year 2003 Fraud & Abuse Task Force to define and recommend solutions to fraud and abuse issues. Funds for Learning, LLC Comments at 25. This task force could clarify issues that may appear to be fraud or abuse and aren't, assist the Commission and the Administrator in focusing their time wisely on issue that are significant while alleviating concerns in other areas where, perhaps, more time is being spent than is reasonable given the scope of the program.

2. Prohibitions on Participation Should Be Imposed.

CCSSO supports the Administrator's recommendations regarding the Department of Justice regimen for interim enforcement measures. USAC Comments at 32. Because these measures are well defined and have a history of use within other contexts, it will be more efficient to employ them than create new standards that need to be explored, developed, tested and implemented.

In addition, CCSSO supports the Administrator's recommendation that consultants register and get an identification number similar to tax preparers. USAC Comments at 33-34. This should mitigate some of the confusion that currently exists on applications where the

applicant has relied exclusively on outside support for completing the process and the Administrator needs additional information.

Finally, CCSSO supports Funds for Learning, LLC's recommendations regarding better educational efforts on behalf of the Administrator in keeping applicants informed regarding the program requirements and expectations. Funds for Learning, LLC Comments at 3-4, 33-34; Applicants are willing to comply with the program requirements if they know what they are and how the Administrator intends to interpret them.

E. Other Suggestions--Changing Service Requests

CCSSO supports the Pennsylvania Department of Education's and Illinois Department of Education's recommendations that the Commission allow applicants to revise their service requests once a funding commitment has been made as long as certain conditions apply. Pennsylvania Department of Education Comments at 14-15; Illinois Department of Education at 29. This is an important proposal because of the timing of E-rate. Due to the complicated process, school districts are required to make funding decisions long before their budgets are finalized. Further, grant applications are rarely on the same cycle.

For example, a prudent district that is carefully considering the cost of telecommunications services may request funding for a 56K line. However, subsequent to completing the application process, the district receives a grant for telecommunications services that expands the budget and allows them to lease a T-1 line instead. This is a positive development for the district and improves the telecommunications infrastructure available to them. However, under current practice, this district would have to return its funds for the 56K line and fully fund the T-1 line.

If the E-rate program is meant to expand school capacity, the current policy is not logical. On the other hand, CCSSO understands the Administrator's potential concern and offers two limitations to this proposal: 1) Change requests must stay within the same category and 2) there should be no increase in funding for the Funding Request Number (FRN). This provides certainty regarding the funds and significantly limits any inappropriate funding that might otherwise occur.

F. Americans with Disabilities Act Issues

In the *NPRM*, the Commission requested comments on whether the E-rate program should be used to enforce the Americans with Disabilities Act (ADA). While most applicant and service provider commenters were unanimously opposed to the idea due to various concerns, some commenters supported the proposal.[5]

The CCSSO submits that the importance of ADA, the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act cannot be overstated. Indeed, CCSSO's mission is to assist chief state school officers and their organizations in achieving the vision of an American education system that enables all children, including those with disabilities, to succeed in school, work and life. Moreover, the CCSSO supports the critical role that the U.S. Department of Education (USED) plays in enforcing federal disability policy to prohibit discrimination against children with disabilities in schools and enhance opportunities for student success. Given this current role of USED, CCSSO believes that use of the E-rate to enforce the ADA is unwarranted and could be unnecessary burdensome to school systems most in need of this critical opportunity.

The Office of Civil Rights (OCR) of the U.S. Department of Education enforces Section 504 of the Rehabilitation Act in programs and activities that receive assistance from USED. OCR also enforces Title II of the Americans with Disabilities Act. Section 504 states that "no otherwise qualified individual with a disability in the United States … shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance…"

Section 504 and Title II also make clear that students may not be excluded on the basis of disability from participating in extra-curricular activities and non-academic services. These may include counseling services, physical education and recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school, referrals to agencies that provide assistance to persons with disabilities, and/or student employment.

IDEA, enforced by the Office of Special Education Programs (OSEP) of the U.S. Department of Education, requires schools to develop, according to specific standards, an individualized education program (IEP) for each eligible student with disabilities. The IEP articulates the services a school must provide a student with disabilities that enables the "free and appropriate education" mandated under IDEA. According to OCR, "An IEP that meets the

[5] *See e.g.,* Comments of National Council on Disability, Telecommunications for the Deaf, Inc. and Michigan Cerebral Palsy Foundation.

requirements of the IDEA also fulfills the requirements of Section 504 and Title II of the ADA for an appropriate education for a disabled student."[6]

Given these multiple requirements and the current role of the USED to enforce ADA, Section 504 and IDEA in schools, an expanded role of the FCC to enforce ADA in schools under the E-rate program is unwarranted. The desires of schools to serve all students well, frameworks for standards-based reform embedded in federal and state education statutes and the current enforcement provisions of USED create strong enough incentives for the vast majority of schools to comply with ADA, IDEA and Section 504. As such, the FCC proposal represents an unnecessary duplication of efforts. Furthermore, the attendant paperwork recommended by the FCC to certify ADA compliance may discourage schools and districts, particularly those with limited administrative staff, from utilizing the E-rate program to benefit all students.

States, districts and schools are tremendously burdened with current federal paperwork requirements. This is especially the case when considering the documentation of services delivered to students with disabilities. Several efforts at the national level have been underway to streamline paperwork requirements relative to special education and services to students with disabilities. In fact, much of the current debate regarding the reauthorization of IDEA centers around the need to balance traditional compliance requirements for inputs with a stronger focus on student achievement and outcomes.

We recommend that the FCC rely on current systems in operation by the USED via OSEP and OCR to enforce ADA, Section 504 and IDEA. Finally, it is important for the

[6] See Student Placement in Elementary and Secondary Schools and Section 504 and Title II of the Americans with Disabilities Act, U.S. Department of Education, Office of Civil Rights (www.ed.gov/offices/OCR/docs/placpub.html)

Commission to consider the proliferation of certifications that are being imposed on E-rate applicants. As certifications and the required supporting paperwork increase, the ability of E-rate applicants to comply in a cost-effective manner declines. This could lead applicants to consider becoming consortia to deal with the paperwork burden that is being imposed. On the other hand, consortia already have additional paperwork burdens that are being imposed which may, if increased, reduce the interest in program participation. As the Commission considers the request to increase certifications, CCSSO requests it consider the burdens certifications can impose.

III. Conclusion

The CCSSO reiterates its appreciation for the support the Commission has provided to the Universal Service Program for Schools and Libraries. The Commission has provided extraordinary leadership during very difficult times. We stand ready to assist the Commission on these and other issues as the program moves forward.

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